



General Assembly

Substitute Bill No. 394

February Session, 2012

* ____SB00394HS____032312____ *

**AN ACT CONCERNING MEDICAID ELIGIBILITY AND THE
IDENTIFICATION AND RECOVERY OF ASSETS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-261 of the 2012 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2012*):

4 (a) Medical assistance shall be provided for any otherwise eligible
5 person whose income, including any available support from legally
6 liable relatives and the income of the person's spouse or dependent
7 child, is not more than one hundred forty-three per cent, pending
8 approval of a federal waiver applied for pursuant to subsection (e) of
9 this section, of the benefit amount paid to a person with no income
10 under the temporary family assistance program in the appropriate
11 region of residence and if such person is an institutionalized
12 individual as defined in Section [1917(c)] 1917 of the Social Security
13 Act, 42 USC [1396p(c)] 1396p(h)(3), and has not made an assignment or
14 transfer or other disposition of property for less than fair market value
15 for the purpose of establishing eligibility for benefits or assistance
16 under this section. Any such disposition shall be treated in accordance
17 with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any
18 disposition of property made on behalf of an applicant or recipient or
19 the spouse of an applicant or recipient by a guardian, conservator,

20 person authorized to make such disposition pursuant to a power of
21 attorney or other person so authorized by law shall be attributed to
22 such applicant, recipient or spouse. A disposition of property ordered
23 by a court shall be evaluated in accordance with the standards applied
24 to any other such disposition for the purpose of determining eligibility.
25 The commissioner shall establish the standards for eligibility for
26 medical assistance at one hundred forty-three per cent of the benefit
27 amount paid to a family unit of equal size with no income under the
28 temporary family assistance program in the appropriate region of
29 residence. Except as provided in section 17b-277, the medical
30 assistance program shall provide coverage to persons under the age of
31 nineteen with family income up to one hundred eighty-five per cent of
32 the federal poverty level without an asset limit and to persons under
33 the age of nineteen and their parents and needy caretaker relatives,
34 who qualify for coverage under Section 1931 of the Social Security Act,
35 with family income up to one hundred eighty-five per cent of the
36 federal poverty level without an asset limit. Such levels shall be based
37 on the regional differences in such benefit amount, if applicable, unless
38 such levels based on regional differences are not in conformance with
39 federal law. Any income in excess of the applicable amounts shall be
40 applied as may be required by said federal law, and assistance shall be
41 granted for the balance of the cost of authorized medical assistance.
42 The Commissioner of Social Services shall provide applicants for
43 assistance under this section, at the time of application, with a written
44 statement advising them of (1) the effect of an assignment or transfer
45 or other disposition of property on eligibility for benefits or assistance,
46 (2) the effect that having income that exceeds the limits prescribed in
47 this subsection will have with respect to program eligibility, and (3)
48 the availability of, and eligibility for, services provided by the
49 Nurturing Families Network established pursuant to section 17b-751b.
50 Persons who are determined ineligible for assistance pursuant to this
51 section shall be provided a written statement notifying such persons of
52 their ineligibility and advising such persons of the availability of
53 HUSKY Plan, Part B health insurance benefits.

54 (b) For the purposes of the Medicaid program, the Commissioner of
55 Social Services shall consider parental income and resources as
56 available to a child under eighteen years of age who is living with his
57 or her parents and is blind or disabled for purposes of the Medicaid
58 program, or to any other child under twenty-one years of age who is
59 living with his or her parents.

60 (c) For the purposes of determining eligibility for the Medicaid
61 program, an available asset is one that is actually available to the
62 applicant or one that the applicant has the legal right, authority or
63 power to obtain or to have applied for the applicant's general or
64 medical support. If the terms of a trust provide for the support of an
65 applicant, the refusal of a trustee to make a distribution from the trust
66 does not render the trust an unavailable asset. Notwithstanding the
67 provisions of this subsection, the availability of funds in a trust or
68 similar instrument funded in whole or in part by the applicant or the
69 applicant's spouse shall be determined pursuant to the Omnibus
70 Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of
71 this subsection shall not apply to a special needs trust, as defined in 42
72 USC 1396p(d)(4)(A). For purposes of determining whether a
73 beneficiary under a special needs trust, who has not received a
74 disability determination from the Social Security Administration, is
75 disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social
76 Services, or the commissioner's designee, shall independently make
77 such determination. The commissioner shall not require such
78 beneficiary to apply for Social Security disability benefits or obtain a
79 disability determination from the Social Security Administration for
80 purposes of determining whether the beneficiary is disabled.

81 (d) The transfer of an asset in exchange for other valuable
82 consideration shall be allowable to the extent the value of the other
83 valuable consideration is equal to or greater than the value of the asset
84 transferred.

85 (e) The Commissioner of Social Services shall seek a waiver from
86 federal law to permit federal financial participation for Medicaid

87 expenditures for families with incomes of one hundred forty-three per
88 cent of the temporary family assistance program payment standard.

89 (f) To the extent permitted by federal law, Medicaid eligibility shall
90 be extended for one year to a family that becomes ineligible for
91 medical assistance under Section 1931 of the Social Security Act due to
92 income from employment by one of its members who is a caretaker
93 relative or due to receipt of child support income. A family receiving
94 extended benefits on July 1, 2005, shall receive the balance of such
95 extended benefits, provided no such family shall receive more than
96 twelve additional months of such benefits.

97 (g) An institutionalized spouse applying for Medicaid and having a
98 spouse living in the community shall be required, to the maximum
99 extent permitted by law, to divert income to such community spouse
100 in order to raise the community spouse's income to the level of the
101 minimum monthly needs allowance, as described in Section 1924 of
102 the Social Security Act. Such diversion of income shall occur before the
103 community spouse is allowed to retain assets in excess of the
104 community spouse protected amount described in Section 1924 of the
105 Social Security Act. The Commissioner of Social Services, pursuant to
106 section 17b-10, may implement the provisions of this subsection while
107 in the process of adopting regulations, provided the commissioner
108 prints notice of intent to adopt the regulations in the Connecticut Law
109 Journal within twenty days of adopting such policy. Such policy shall
110 be valid until the time final regulations are effective.

111 (h) To the extent permissible by federal law, an institutionalized
112 individual, as defined in Section 1917 of the Social Security Act, 42
113 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely
114 on the basis of a disqualifying asset. As used in this subsection,
115 "disqualifying asset" means a single, noncash asset that causes the
116 assets of an institutionalized individual who is otherwise eligible for
117 Medicaid to exceed the permissible threshold. If the individual is
118 eligible for Medicaid except for the disqualifying asset, the
119 Commissioner of Social Services shall forthwith notify the individual,

120 or the individual's guardian or conservator, if any, or legally liable
121 relative or other responsible party, if known, and the facility where
122 such individual is institutionalized. The individual shall have forty-
123 five days from receipt of the notice to expend or liquidate the
124 disqualifying asset. If the individual has not done so in such time, the
125 department shall grant the individual's application for Medicaid,
126 provided the state of Connecticut shall have a lien against the
127 disqualifying asset, which shall have priority over all other unsecured
128 claims and unrecorded encumbrances in accordance with the
129 provisions of section 17b-93.

130 [(h)] (i) Medical assistance shall be provided, in accordance with the
131 provisions of subsection (e) of section 17a-6, to any child under the
132 supervision of the Commissioner of Children and Families who is not
133 receiving Medicaid benefits, has not yet qualified for Medicaid benefits
134 or is otherwise ineligible for such benefits. Medical assistance shall also
135 be provided to any child in the voluntary services program operated
136 by the Department of Developmental Services who is not receiving
137 Medicaid benefits, has not yet qualified for Medicaid benefits or is
138 otherwise ineligible for benefits. To the extent practicable, the
139 Commissioner of Children and Families and the Commissioner of
140 Developmental Services shall apply for, or assist such child in
141 qualifying for, the Medicaid program.

142 [(i)] (j) The Commissioner of Social Services shall provide Early and
143 Periodic Screening, Diagnostic and Treatment program services, as
144 required and defined as of December 31, 2005, by 42 USC 1396a(a)(43),
145 42 USC 1396d(r) and 42 USC 1396d(a)(4)(B) and applicable federal
146 regulations, to all persons who are under the age of twenty-one and
147 otherwise eligible for medical assistance under this section.

148 Sec. 2. Section 17b-261a of the 2012 supplement to the general
149 statutes is repealed and the following is substituted in lieu thereof
150 (*Effective July 1, 2012*):

151 (a) Any transfer or assignment of assets resulting in the imposition

152 of a penalty period shall be presumed to be made with the intent, on
153 the part of the transferor or the transferee, to enable the transferor to
154 obtain or maintain eligibility for medical assistance. This presumption
155 may be rebutted only by clear and convincing evidence that the
156 transferor's eligibility or potential eligibility for medical assistance was
157 not a basis for the transfer or assignment.

158 (b) Any transfer or assignment of assets resulting in the
159 establishment or imposition of a penalty period shall create a debt, as
160 defined in section 36a-645, that shall be due and owing by the
161 transferor or transferee to the Department of Social Services in an
162 amount equal to [the amount of the medical assistance] any payments
163 for the cost of medical care provided to [or on behalf of] the transferor
164 during the penalty period on or after the date of the transfer of assets [,
165 but said amount shall not exceed] or the fair market value of the assets
166 at the time of transfer, whichever is higher, plus penalties. The
167 Commissioner of Social Services, the Commissioner of Administrative
168 Services and the Attorney General shall have the power or authority to
169 seek administrative, legal or equitable relief as provided by other
170 statutes or by common law to recover any payments made to or on
171 behalf of the transferor during the penalty period. If assets were
172 intentionally transferred to obtain or maintain eligibility for medical
173 assistance, the Commissioner of Social Services may assess a monetary
174 penalty up to double the amount of the debt. Not later than January 1,
175 2013, the commissioner shall issue a request for proposals from private
176 entities to manage debt collection related to nursing home care. The
177 commissioner may contract with a private entity to maximize debt
178 collection efforts and minimize costs for the state.

179 (c) The Commissioner of Social Services may waive the imposition
180 of a penalty period when the transferor (1) in accordance with the
181 provisions of section 3025.25 of the department's Uniform Policy
182 Manual, suffers from dementia at the time of application for medical
183 assistance and cannot explain transfers that would otherwise result in
184 the imposition of a penalty period; or (2) suffered from dementia at the
185 time of the transfer; or (3) was exploited into making such a transfer

186 due to dementia. Waiver of the imposition of a penalty period does not
187 prohibit the establishment of a debt in accordance with subsection (b)
188 of this section.

189 (d) An institutionalized individual shall not be penalized for the
190 transfer of an asset if the entire amount of the transferred asset is
191 returned to the institutionalized individual. The partial return of a
192 transferred asset shall not result in a reduced penalty period.

193 (1) If there are multiple transfers of assets to the same or different
194 transferees, a return of anything less than the total amount of the
195 transferred assets from all of the separate transferees shall not
196 constitute a return of the entire amount of the transferred assets.

197 (2) If the circumstances surrounding the transfer of an asset and
198 return of the entire amount of the asset to the institutionalized
199 individual indicates to the Department of Social Services that such
200 individual, such individual's spouse or such individual's authorized
201 representative intended, from the time the asset was transferred, that
202 the transferee would subsequently return the asset to such individual,
203 such individual's spouse or such individual's authorized
204 representative for the purpose of altering the start of the penalty
205 period or shifting nursing facility costs, that may have been borne by
206 such individual, to the Medicaid program, the entire amount of the
207 returned asset shall be considered available to such individual from
208 the date of transfer. If such individual demonstrates to the department
209 that the purpose of the transfer and its subsequent return was not to
210 alter the penalty period or qualify such individual for Medicaid
211 eligibility, the entire amount of the returned asset is considered
212 available to the individual from the date of the return of the
213 transferred asset.

214 (3) The conveyance and subsequent return of an asset for the
215 purpose of shifting costs to the Medicaid program shall be regarded as
216 a trust-like device. Such asset shall be considered available for the
217 purpose of determining Medicaid eligibility.

218 (4) For purposes of this section, an "institutionalized individual"
 219 means an individual who is receiving (A) services from a long-term
 220 care facility, (B) services from a medical institution which are
 221 equivalent to those services provided in a long-term care facility, or (C)
 222 home and community-based services under a Medicaid waiver.

223 (e) The Commissioner of Social Services may, upon the request of a
 224 nursing facility, provide financial relief in the form of retroactive and
 225 continued Medicaid payments, as applicable, to a facility for any
 226 resident subject to the transfer of assets penalty if the nursing home
 227 establishes that: (1) The resident did not apply or qualify for an undue
 228 hardship waiver pursuant to section 17b-261, as amended by this act;
 229 (2) the resident has resided in the nursing facility for at least ninety
 230 days with no payment made on the resident's account for such time
 231 period; and (3) the nursing facility has made every practicable effort
 232 that is permissible under state and federal law to recover such funds
 233 due. Any Medicaid payments made to a nursing facility pursuant to
 234 this subsection shall constitute a debt under subsection (b) of this
 235 section.

236 [(e)] (f) The Commissioner of Social Services, pursuant to section
 237 17b-10, shall implement the policies and procedures necessary to carry
 238 out the provisions of this section while in the process of adopting such
 239 policies and procedures in regulation form, provided notice of intent to
 240 adopt regulations is published in the Connecticut Law Journal not later
 241 than twenty days after implementation. Such policies and procedures
 242 shall be valid until the time final regulations are effective.

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2012	17b-261
Sec. 2	July 1, 2012	17b-261a

Statement of Legislative Commissioners:

In section 1(h) language was added after "facility" for clarity and in section 2(b) "party" was changed to "entity" for internal consistency.

HS *Joint Favorable Subst.*